

EMPLOYMENT LAW UPDATE

THE SUE YOUR BOSS LAW

October, 2004

On January 1, 2004, a new law went into effect known as the "Sue Your Boss" law. This new law allows all employees and former employees to sue their employers for any violation of the California Labor Code, and to collect civil penalties and attorneys fees. This new law is also referred to as the "Labor Law Private Attorney General Act of 2004," and it added Labor Code Section 2698 to the statutes.

California Labor Code § 2698 affords workers the right to directly bring lawsuits against employers and recover civil fines and penalties for wages and hour violations. Previously, only the California Labor Commissioner through the Department of Labor Standards Enforcement could sue for such penalties. The new law gives a private legal action to employees against a private employer who violated California wage and hour laws.

California Labor Code § 2698 et seq. provides significant new penalties against employers who fail to abide by employment laws. The civil penalty varies in amount depending on the number of employees. If the employer does not have any employees at the time of violation, the civil penalty is \$500. If the employer has one or more employees, the fine is \$100 per aggrieved employee per pay period for first violation and \$200 for each aggrieved employee per pay period for each subsequent violation. An employee is also allowed to sue the same employer under other state or federal laws in addition to this Act. Potentially, an employee could win two civil suits against their employer for labor law violations.

RECENT REFORMS TO THE SUE YOUR BOSS LAW

On August 11, 2004 Governor Schwarzenegger reformed and amended Labor Code § 2698 by signing SB 1809. This bill went into effect on August 12, 2004, with two provisions retroactive to January 1, 2004. The new law does not repeal the Sue Your Boss Law or the penalties it created, but instead it instructs the courts to exercise discretion to award lesser penalties to avoid unjust results. It also creates procedural steps that must be followed for three broad categories of alleged Labor Code violations before an employee lawsuit may be filed. (Labor Code sections 2699, 2699.5 and 2699.5). In all three categories the employee must first notify the employer and the appropriate state agency of the alleged violation. The notice must include the specific code provisions alleged to have been violated, and the facts and arguments supporting the violation. All time limits run from the postmark date of this notice.

After receipt of the notice, an employer has 33 calendar days to cure the alleged violation and notify the employee and the Agency of the actions taken to cure the alleged violations. Only

if the employer does not act to timely cure the alleged violation may the employee may file a lawsuit.

This law was passed specifically to address the rash of frivolous lawsuit instigated by the passage of the SB 796. Therefore, pending lawsuits are affected by two specific changes:

- Lawsuits for most violations of posting, notice, agency reporting or filing requirements are now excluded from the onerous penalties and private enforcement, except those relating to mandatory payroll or workplace injury reporting; and
- A court must review and approve penalties in connection with any settlement agreement.

Although SB 1809 as signed includes important provisions to protect employers against frivolous lawsuits, penalties for proven violations still have the potential to be quite large - \$100 to \$200 per employee multiplied by the number of pay periods during which the violation existed. Therefore, it remains important that employers:

- Train managers, supervisors and employees responsible for human resources and payroll activities in the requirements of California employment law, and
- Document human resources decisions and maintain accurate, complete and organized human resources and payroll records.

Finally SB 1809 did repeal Labor Code section 431 which required all employers to file a sample of their employment applications with the Division of Labor Standards Enforcement.

Because of the potential for penalties that could literally ruin a business, employers should always consult with their attorney when in doubt of how to proceed on wage and labor matters.

The information contained herein is not intended as legal advice and should not be acted upon. If you have additional questions about this subject or would like to consult with an attorney, please call Jennifer J. Hagan or James Hagan at The Hagan Law Firm (650) 322-8498.